IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.4841/2000
Dr. (Mrs.) HARSHU GUPTA V/s L.I.C. & Anr.

DATE OF ORDER :::: 8.1.2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Suresh Sahni for the petitioner.
Shri Anurag Agarwal for respondents.

This writ petition has been filed by the petitioner Dr. (Mrs.) Harshu Gupta challenging the validity of order dated 19.4.2000 passed by the respondent No.1, whereby Insurance Policy No.184000704 on her life was cancelled and with the prayer that action be initiated against the Branch Manager, Life Insurance Corporation of India, Lakheri, District Bundi for professional misconduct.

Shri Suresh Sahni, learned counsel for the petitioner in assailing the said order argued that the petitioner had explicitly and unambiguously revealed to Shri H.N. Tapadia, the then Branch Manager and Shri N.C. Patodiya, the then Development Officer that she was in in the family way and was having a pregnancy of two months. In fact, she pointedly asked them whether this would come as an obstruction in her way to purchase the policy. She was informed that pregnancy of a short duration will not cause any problem and therefore she purchased the policy. Shri Suresh Sahni further argued that the petitioner was allured into buying the policy on the promise that if she did so, her husband, who was posted at Jaipur, would be taken on the panel of LIC doctors. The then Branch Manager Shri H.N. Tapadia

who has been impleaded as respondent No.2, placed before the petitioner a duly filled in proposal form and relying upon him, the petitioner signed it. Before signing, she only had a cursory look at the proposal form. The form was not filled up by the petitioner. It has further been alleged on behalf of the petitioner that her policy was cancelled because the petitioner and her husband who were on the panel of LIC doctors, were being pressurised by the respondent No.2 to pay to him the part of the fee which they were receiving for medical examination of the persons buying LIC policies. When the petitioner failed to oblige, the impugned order was passed as a result of mala fide on the part of the respondent No.2. It has therefore been prayed that the impugned order be quashed

and set aside and the writ petition be allowed in terms of the prayer contained therein.

On the other hand, Shri Anurag Agarwal, learned counsel for the respondents argued that the policy of life insurance was issued to the petitioner on the basis of contract entered into between the parties and this court in exercise of its writ jurisdiction, cannot be called upon to examine and adjudicate upon such a contractual dispute involving complex nature of disputed questions of fact. While referring to section 2(6) of the Insurance Act, 1958, he argued that the jurisdiction to decide such dispute vests in the civil court alone and therefore this court under Articles 226 and 227 of the Constitution of India would not have the jurisdiction to

entertain the dispute. It has been denied that the duly filled in proposal form was presented to the petitioner for obtaining her signature only on such form. It has been denied that any assurance was given to the petitioner by either Shri H.N. Tapadia or Shri N.C. Patrodiya that even if she was pregnant that would not cause any obstruction for purchasing the policy. The petitioner persisted in making such concealment even when a notice was given to her on 2.11.99 calling upon her to explain why such a vital information was with -held by her on the basis of which the policy was proposed to declared null and void. While referring to the reply of the petitioner dated 7.12.99 to the aforesaid notice (Annex.2), Shri Anurag Agarwal argued that the petitioner had not denied the fact

of having made concealment and rather contended that she purchased the policy under ignorance of the LIC Rules and that she regretted and even submitted an apology.

Shri Suresh Sahni rejoined and apart from reiterating the above mentioned arguments, submitted that the respondent No.2, Shri H.N. Tapadia in spite of having been served with a notice of the present writ petition has chosen not to contest the same and therefore the allegations of mala fide against him should be taken to have been proved.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and have perused the material on record.

The stand taken by the petitioner on the first occasion when she replied to the show

cause notice and the other material available on record make it clear that the petitioner had a pregnancy of the duration of two months when she signed the proposal form for buying the policy of insurance, and, therefore as a logical corollary thereto, it should also be taken to have been proved that she made wrong declaration when in the relevant column she was required to answer the pointed query as regards her status of pregnancy / mensuration. When the respondents insist on all those buying the insurance policy to give true and complete information, purchase of policy on the basis of false information cannot be appreciated. Besides, this is disputed question of fact which cannot be permitted appropriately gone into by this court in exercise of its extra ordinary jurisdiction under Article

226 of the Constitution of India. Even if the respondent No.2 has chosen not to deny the allegation, the fact remains that the petitioner could not act upon understanding or assurance given to by the respondent No.2 and therefore notwithstanding his failure to rebut those allegations, the concealment made by the petitioner would stair straight in her face. Besides, Shri H.N. Tapadia, the petitioner has not made Shri N.C. Patodia as respondent therefore in so far as allegations made against him are concerned, they are liable to be rejected.

In view of what has been discussed above, the writ petition fails and is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/